

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petition for Declaratory Ruling of	)	CC Docket No. 01-338
WorldCom, Inc. for a ruling that ILECs	)	
are Prohibited from Imposing use	)	
restrictions on UNEs such as LIDB	)	

**REPLY COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. (“WorldCom”) hereby files its Reply Comments in response to the Comments filed on September 12, 2002 in the above-captioned matter. WorldCom’s Petition for Declaratory Ruling (“Petition”) seeks a determination by the Federal Communications Commission (“FCC” or “Commission”) that incumbent local exchange carriers (“ILECs”) are prohibited from imposing restrictions on competitive carriers’ right to use unbundled network elements (UNEs”). WorldCom specifically asks the FCC to confirm that requesting carriers are entitled to access ILEC Line Information Database (“LIDB”) data at cost-based rates when they use such data to provide interexchange and exchange access services. Overall, the ILEC arguments are either irrelevant or have been previously rejected by the FCC and fail to counter WorldCom’s position

**I. A Petition for Declaratory Ruling is the Appropriate Proceeding**

The ILECs argue, as a threshold matter, that it is inappropriate for the FCC to address the LIDB issue through the instant Petition and that it is more appropriate for the

Triennial Review<sup>1</sup> or other pending dockets.<sup>2</sup> This argument completely ignores the fact that there are provisions of the Telecommunications Act of 1996 (“Act”) and FCC Rules in place now that prohibit the ILECs from restricting WorldCom’s use of the LIDB UNE to local calls only. This is simply an attempt to have this determination delayed into another proceeding. Certainly the ILECs can use the *Triennial Review* or other appropriate docket to argue that the relevant rules should be changed but this proceeding is about existing law.

AT&T correctly calls the timing of this Petition “critical” stating that the FCC needs to ensure “parity of costs between the ILECs and competitors” as more Bell Operating Companies (“BOCs”) receive the authority to enter the long distance market and use the very same LIDB capabilities in connection with their own provision of interexchange services.<sup>3</sup> The ILECs simply cannot provide any basis, nor have they done so here, to support a different rate for identical LIDB functionalities over the same facilities.<sup>4</sup> The only plausible explanation for restricting the use of the LIDB UNE to local services and forcing carriers to pay LIDB tariff rates for interexchange and

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<sup>1</sup> *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, (“Triennial Review”). Although the FCC used the Triennial docket number in this case, it is not precluded from issuing a separate order resolving this matter in the near term. By including the Petition in the Triennial docket the FCC perhaps wanted to include comments from the entire proceeding in rendering a decision here.

<sup>2</sup> BellSouth Comments at 3; Qwest Comments at 1.

<sup>3</sup> AT&T Comments at 3.

<sup>4</sup> See AT&T Comments at 3. The access tariff rate for LIDB versus the LIDB UNE rate is quite different. For example, in Massachusetts the UNE rate for LIDB access is \$.0013800 per query. *Verizon, Inc., Mass. DTE, Tariff No. 17*, Miscellaneous Network Services, Part M, Section 3, Page 3 (Sept. 14, 2000). The access tariff rate in Massachusetts, however, is \$.03914 (transport: \$.0007400 + validation: \$.038400) per query. *Verizon Telephone Companies, FCC Tariff No. 11*, Section 31.21.2 (July 2, 2002). There is no reasonable basis to support this difference.

exchange access services is to raise competitor's costs and ensure continued high access revenues.<sup>5</sup>

## **II. Access Charge Regime Arguments Are Not Relevant**

The ILECs claim that they cannot be compelled to allow interexchange carriers ("IXCs"), such as WorldCom, to use the LIDB UNE for exchange access, but fail to address the overwhelming body of law that supports WorldCom's position. The ILECs simply offer arguments that have already been rejected by the Commission.<sup>6</sup>

The law is clear: the Act unambiguously permits requesting carriers (including interexchange carriers) to use UNEs to provide exchange access services.<sup>7</sup> As WorldCom argued in its Petition, section 251(c)(3) of the Act provides that a requesting carrier can use unbundled network elements for the provision of any telecommunications service.<sup>8</sup> In the *Local Competition Order*, this Commission ruled that "section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a 'telecommunications service'. Exchange access and interexchange

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<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> As WorldCom noted in its Petition, the FCC has previously rejected the ILECs' arguments that allowing use of the UNEs for the purpose of providing exchange access services would allow competitors to circumvent the ILEC's higher access tariffs. WorldCom Petition at 4 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 15499 at ¶ 349 (1996) (*Local Competition Order*); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order*, 15 FCC Rcd 3696 at ¶ 483 (1999) (*UNE Remand Order*)).

<sup>7</sup> See *Local Competition Order* at ¶ 359; *UNE Remand Order* at ¶ 484. WorldCom Petition at 4. See also 47 C.F.R. § 51.309(b).

<sup>8</sup> 47 U.S.C. § 251(c)(3). In its comments, SBC attempts to make a distinction between the use of "a" telecommunications service in § 251(c)(3) as opposed to "any" telecommunications service. SBC Comments at 4. It is WorldCom's view that "a" in this instance means "any" and that SBC's is making a distinction without a difference. Additionally, § 51.307(c) of the FCC's Rules requires an ILEC to provide to a requesting carrier access to a UNE, along with its features, functions and capabilities in manner that allows the requesting carrier to provide "any" telecommunications service that can be offered by means of that network. See 47 C.F.R. § 51.307(c).

services are telecommunications services.”<sup>9</sup> The Commission reaffirmed this principle in the *UNE Remand Order*, and again expressly refused to read a use restriction into the Act.<sup>10</sup> The ILECs ignore the law, however, and claim that pursuant to the Commission’s access charge rules, ILECs must provide LIDB to IXCs pursuant to the access tariffs.<sup>11</sup>

Some commenters similarly argue that to force the ILECs to provide exchange access at UNE rates would constitute “arbitrage”<sup>12</sup> and would nullify the LIDB access tariffs and eliminate all revenue for such access.<sup>13</sup> These claims are misplaced and irrelevant. The Commission’s Rules expressly contemplate that IXCs will purchase UNEs and use those elements to self-provide exchange access services. For example, in its *Access Charge Reform Order* the Commission adopted a “market-based” approach to access charge reform in which the Commission relied in part on the ability of requesting carriers to obtain UNEs at economic costs and in adequate quantities to bring about

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<sup>9</sup> See *Local Competition Order* at ¶ 356.

<sup>10</sup> *UNE Remand Order* at ¶ 484; see also 47 C.F.R. § 51.309(a) (preventing ILECs from placing use restrictions on CLECs’ access to UNEs “that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends”). In only one instance has the Commission allowed a use restriction on a UNE, the enhanced extended link, which the FCC maintained was only on an interim basis while the Commission addressed particular issues. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Clarification Order, 15 FCC Rcd 9587, ¶¶ 17-18 (2000).

<sup>11</sup> BellSouth Comments at 3. WorldCom also notes that the FCC should not give any weight to Qwest’s argument that the Act did not compel the FCC to conduct forward-looking cost studies for interstate access charges or to move to cost-based pricing immediately. Qwest Comments at 3-4. This argument is irrelevant. It is not WorldCom’s position that the FCC has such a duty nor is this the point of the Petition.

<sup>12</sup> Qwest Comments at 2.

<sup>13</sup> E.g. BellSouth at 3. Verizon unnecessarily spends time discussing the establishment of section 69.120 and the LIDB rate element to be imposed on carriers that access LIDB from the LEC to recover costs of the database. Verizon Comments at 2-3 (citing 47 C.F.R. § 69.120). Verizon noted that MCI was a proponent of the LIDB tariff because such access was integral to exchange access and would ensure that LIDB is provided in a reasonable and nondiscriminatory manner. Verizon Comments at 2-3. Verizon does not mention that this occurred prior to the passage of the Act and FCC rules that clearly prohibit Verizon from restricting WorldCom’s use of the LIDB UNE to local calls. It is not surprising that MCI, in 1991, would have sought assurances to receive LIDB in a reasonable and nondiscriminatory manner through a tariff because, at the time, that was the only way to ensure such treatment.

access charge reductions.<sup>14</sup> Moreover, the FCC has recognized that the Act would likely change the volume of access services provided to interexchange carriers.<sup>15</sup>

The Commission has also rejected the ILECs' argument that using the LIDB UNE in lieu of an ILEC's tariffed access services is contrary to the express mandate of Congress in Section 251(g) of the Act.<sup>16</sup> Specifically, the Commission stated:

We disagree with the incumbent LECs which argue that section 251(g) requires requesting carriers using unbundled elements to continue to pay federal and state access charges indefinitely. ... We believe this provision does not apply to the exchange access services requesting carriers may provide themselves or others after purchasing unbundled elements. Rather, the primary purpose of section 251(g) is to preserve the right of [IXCs] to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.<sup>17</sup>

Recently, even Verizon has acknowledged, that just because a service is offered in a tariff does not then preclude the unbundling of an element used to provide that service. Specifically, Verizon admitted that:

[t]he fact that an incumbent local exchange carrier offers a service in an interstate access tariff by itself does not prevent the Commission from finding later that some or all of the facilities used to provide that service may be required to be offered on a unbundled basis as UNEs, provided that the Commission satisfies the statutory criteria in section 251".<sup>18</sup>

### **III. A Finding of Impairment Has Already Been Made**

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<sup>14</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order (rel. May 16, 1997) at ¶ 263.

<sup>15</sup> *Local Competition Order* at ¶ 358.

<sup>16</sup> BellSouth Comments at 3; Qwest Comments at 3; Verizon Comments at 1 and 3.

<sup>17</sup> *Local Competition Order* at ¶ 362.

<sup>18</sup> *In the Matter of Verizon Telephone Companies Tariff* FCC Nos. 1 and 11, Transmittal No. 232, Reply Comments of Verizon, filed August 22, 2002 at 3.

The ILECs all argue that the FCC Rules and recent cases do not require an ILEC to provide a UNE in a particular market without first making a finding regarding “impairment” pursuant to the unbundling analysis of section 251(c)(3) of the Act.<sup>19</sup> For example, Qwest claims that the FCC cannot require that an element be provided on an unbundled basis in a particular market unless it finds that the requesting carrier would be impaired absent such access.<sup>20</sup> These arguments ignore the law.<sup>21</sup>

The FCC has indeed found that WorldCom and other competitive carriers would be impaired in the interexchange and exchange access market without access to the LIDB database. The Commission concluded that a requesting carrier’s ability to provide the services it seeks to offer is impaired without unbundled access to the incumbent LECs call related databases.<sup>22</sup> As the FCC recognized, “there are no alternatives of comparable quality and ubiquity available to requesting carriers as a practical, economic and operational matter, for the incumbent LECs’ call-related databases.”<sup>23</sup> Conveniently, none of the ILECs mention these Commission findings.

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<sup>19</sup> 47 U.S.C. § 251(c)(3).

<sup>20</sup> Qwest Comments at 2 and 7; SBC Comments at 6-7; Verizon Comments at 5.

<sup>21</sup> WorldCom notes that although the *USTA* decision vacated and remanded the FCC’s unbundling rules to allow the FCC to include a more market-specific analysis in determining which elements need to be unbundled, it is in the remand of that proceeding as well as the *Triennial Review* in which the FCC will appropriately consider the policy implications of a market-specific analysis. *USTA v. FCC*, 00-1012, Slip Op., (May 24, 2002) *reh’g denied* (Sept. 4, 2002). See SBC Comments at 2. Moreover, the only logical inference to be drawn from *USTA* is that the court was referring to geographic markets, not a service-by-service analysis.

<sup>22</sup> *UNE Remand Order* at ¶ 402.

<sup>23</sup> *Id.* at ¶ 410. See also AT&T Comments at 2-3 (noting there is no comparable collection of data that carriers can use to confirm the validity of calling number, calling cards and required screening). Although, Qwest argues that there are other non-ILEC providers of LIDB today, its argument is apparently designed to mislead the Commission since the data available from Verisign and other third party providers does not contain ILEC LIDB data. Qwest Comments at 7-8. Rather, the LIDB data available from other providers contains data from other telecommunications carriers, including WorldCom, and is not the LIDB data collected by the ILECs for their subscribers within the ILECs’ operating regions.

Additionally, the FCC has found that the ILECs' provision of tariff services does not have any weight in an impairment analysis.<sup>24</sup> Accordingly, any impairment analysis would necessarily conclude that IXC are impaired without access to LIDB because the ILEC is the only provider of LIDB.

#### **IV. ILEC Challenges To Prohibition On Use Restrictions Are Unpersuasive**

BellSouth contends that the FCC has required that the IXCs demonstrate that they are providing local services over a UNE in one specific instance.<sup>25</sup> Citing the enhanced extended links or "EELs" use restriction, BellSouth states that the IXCs have been precluded from converting special access services to UNE combinations unless such combinations are "use[d]... to provide a significant amount of local exchange service, in addition to exchange access service to a particular customer".<sup>26</sup> This actually proves WorldCom's point. In the single instance where the FCC intended to impose a UNE restriction, it did so explicitly. Use restrictions cannot be implied for any other UNE, such as LIDB, where the FCC has not done so.

SBC also challenges WorldCom's position that section 251(c)(3) prohibits use restrictions on UNEs and claims that it is section 251(d)(2) that is the proper focus for the unbundling inquiry.<sup>27</sup> SBC added that section 251(d)(2) specifically directs the FCC to

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<sup>24</sup> *UNE Remand Order* at ¶ 67. This section also completely undercuts the ILEC argument that because IXCs have been purchasing LIDB from access tariffs for years, the IXCs cannot make a showing of impairment. *See* Qwest Comments at 2; Verizon Comments at 5. The ILECs also ignore that the process of buying LIDB from the access tariff was the only way to get access to LIDB prior to the passage of the Act.

<sup>25</sup> BellSouth Comments at 1-2.

<sup>26</sup> *Id.* (citing the *Local Competition Order* at ¶ 2.) WorldCom notes that it is on record in another proceeding challenging that this carve-out is unlawful.

<sup>27</sup> SBC Comments at 5.

consider “the services that [the requesting carrier] seeks to offer” in analyzing impairment and determining which elements should be unbundled.<sup>28</sup> This does not mean that these statutory sections are in conflict nor does it alter the ILECs’ obligations. Presumably, SBC relies on the holding in *AT&T v. Iowa Utilities Board* (“AT&T”)<sup>29</sup> which stated that, in the FCC’s adoption of its initial list of network elements, the FCC failed to make the “impairment” determination required by § 251(d)(2) because the FCC had not considered alternatives outside the ILECs’ networks and had treated immaterial cost differences as constituting impairment. But the prior impairment analysis under § 251(d)(2) in no way taints the FCC’s prior construction of §§ 153(29) and 251(c)(3). The rules that generally codify these interpretations<sup>30</sup> have been upheld (without discussion) by the Eighth Circuit<sup>31</sup> and were not challenged in the Supreme Court. While the ILECs did challenge the FCC’s application of its network element definition, the Supreme Court held that “the Commission’s application of the ‘network element’ definition is eminently reasonable.”<sup>32</sup>

Nor, did the FCC adopt a service-by-service impairment standard in the *UNE Remand Order*.<sup>33</sup> Indeed, in the course of the UNE Remand proceeding, the FCC never suggested that its impairment analysis would be based on the services offered.

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<sup>28</sup> *Id.* See also Qwest Comments at 6.

<sup>29</sup> *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (“AT&T”).

<sup>30</sup> See 47 C.F.R. § 51.307(c); 47 C.F.R. § 51.309(a)-(b).

<sup>31</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 819 n.39 (8th Cir. 1997); *aff’d in part and rev’d in part on other grounds*, 525 U.S. 366 (1999).

<sup>32</sup> *AT&T* at 387.

<sup>33</sup> Qwest Comments at 6.



Additionally, SBC claims that section 51.309(a)<sup>34</sup> of the FCC's Rules only applies if the function at issue – access to the LIDB to support interexchange services – is part of the LIDB UNE.<sup>35</sup> This is simply untrue. The definition of a UNE includes all of its functions and it would be impossible by definition to exclude some part of its functions. Moreover, section 51.307(c) of the FCC's Rules specifically includes features, functions, and capabilities of the UNE as part of the ILEC obligation to provide access to UNEs.<sup>36</sup>

## V. Use Restrictions On LIDB Are Discriminatory

SBC's claim that because the FCC has not required the ILECs to provide unbundled access to LIDB as a UNE for the provision of interexchange services, the discriminatory provisions of § 251(c)(3) of the Act and § 51.311 of the FCC's Rules are not triggered falls flat.<sup>37</sup> SBC is incorrect. LIDB in this instance is indeed a UNE.

Verizon's argument that WorldCom's discrimination claim is wrong because all IXC's pay the same tariffed rate and it would be discriminatory to allow WorldCom to pay the UNE rate while the IXC's continue to pay the tariff rate misses the mark entirely.<sup>38</sup> WorldCom's Petition does not ask the FCC to declare that WorldCom should

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<sup>34</sup> 47 C.F.R. § 51.309(a) (rule precludes an ILEC from placing limitations, restrictions, or requirements on requests for the use of a UNE).

<sup>35</sup> SBC Comments at 6.

<sup>36</sup> Section 51.307(c) of the Commission Rules specifically provides that:

[a]n incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, **along with all of the unbundled network element's features, functions and capabilities**, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element. (emphasis added). 47 C.F.R. § 51.307(c).

<sup>37</sup> SBC Comments at 9.

<sup>38</sup> Verizon Comments at 6-7.

receive the UNE rate; the Petition seeks a ruling that ILECs can no longer place use restrictions on the use of the LIDB UNE as clearly prohibited by the Act and Commissions Rules.

AT&T is correct that the use restrictions placed on the LIDB UNE by the ILECs is discriminatory conduct, precluded by the FCC's Rules permitting requesting carriers to use all of the features, functions and capabilities of any UNE to provide any telecommunications services.<sup>39</sup> Additionally, as WorldCom stated in its Petition, a requesting carrier's access to a UNE must be equal to that which the ILEC provides to itself.<sup>40</sup> Verizon has access to LIDB for billing its toll as well as local traffic. Denying WorldCom the same access is unlawful.

## **VI. CONCLUSION**

For the foregoing reasons, WorldCom respectfully requests that the FCC expeditiously grant its Petition.

Respectfully submitted,

WORLDCOM, INC.

/s/Lisa R. Youngers

Lisa R. Youngers

Kecia Boney Lewis

1133 19<sup>th</sup> Street, N.W.

Washington, D.C. 20036

(202) 736-6270

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<sup>39</sup> AT&T Comments at 3 (citing 47 C.F.R. §§ 51.307 (c), 51.309(a), 51.311(a), 51.313(b)).

<sup>40</sup> Petition at 6 (citing § 51.311(b)).